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ABSTRACT

This paper discusses the controversy that has traditionally surrounded the issue of capital punishment. When a Texas television reporter sought permission to televise the execution of a convicted murderer by lethal injection in 1983, arguments were advanced both for and against televising executions. A recent poll shows that 84% of Americans support capital punishment. However, some researchers feel that televising executions would encourage aggressive tendencies and result in commission of similar crimes. Historical and statistical data suggest that, apart from a short-lived effect lasting a few days, no observable decline in capital crimes would result from televised executions. Perhaps a limited trial run of televised executions in a state such as Texas could be monitored by surveying the potential audience before and after such exposure and observing its effects. (DF)

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PREDICTORS FOR THE EFFECTS
OF TELEVISED EXECUTIONS

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In 1983 Don Kobos, a Houston television reporter, sought permission to televise the execution of convicted murderer James Autry by lethal injection. Texas Attorney General Jim Mattox said he saw no legal impediment to televised executions, but the Texas Board of Corrections voted down the Kobos petition, a decision upheld by the Circuit Court of Appeals (5th Circuit) (Associated Press, 1984).

As part of the Kobos affidavit, condemned killer James Autry echoed sentiments of those death penalty abolitionists who favor televised executions. "I want my execution put on TV because it may help stop someone else from being put to death on death row, and maybe someone will see my execution and decide the penalty isn't right" (AP, 1984).

But arguments on behalf of televised executions are also advanced by those who favor the death penalty. This contingent reasons that if the death penalty functions as a deterrent to capital crimes, executions as publicly and graphically shown as possible would maximize the deterrent effect of capital punishment.

A third point of view, advocated by some on both sides of the capital punishment issue, argues against televised executions because such spectacles would further brutalize the American public and contribute negatively to the climate of violence -- on and off television -- and to a greater disregard for human life. "The public execution is now seen as a hearth

in which violence bursts again into flame" (Foucault, 1975). And there may be other consequences of televised executions which these propositions fail to address or which they may even obscure.

In order to assess these arguments and to arrive at some predictors for the effects of televised executions, it is necessary to consider several overlapping areas of information, including historical evidence, effects studies (both those concerning the deterrent effects of capital punishment on crime and those which attempt to measure more general public responses to violence) and research dealing with public opinion and the cultural climate, the context of capital punishment. The dimension of broadcast access to judicial process adds to the complexity of the debate concerning the death penalty itself, a complexity reflected by United States Supreme Court decisions over the past two decades.

SOME BACKGROUND

"Executions must be a spectator sport."
- Mailer, The Executioner's Song

The traditions of capital punishment and public execution were adapted by the American colonies from the British statutes known as the Bloody Code. But judicial codes were not uniform in the colonies. The lack of uniformity, both of statutes and punishments, figures in legal and moral arguments about the death penalty today. Those who charge the death penalty with being "cruel and unusual" punishment cite the lack of uniform

laws and enforcement, along with a built-in bias against the poor and racial minorities.

In 1787, Dr. Benjamin Rush delivered an address on "The Effects of Public Punishments Upon Criminals and Society," which led to the construction of the Walnut Street Jail in Philadelphia, the beginning of the American penitentiary system (Bedau 1982). As one chronicler of American executions said: "Perhaps no single event brought more spectators... than a public hanging. People drove for miles to be present; some camped in the vicinity for several days. Entertainers, vendors, pick-pockets, promoters, evangelists, sight-seers, peddlers and medicine men would descend on the town before the fatal day" (McDade 1961).

Not just the lower classes clamored for views of these proceedings, as indicated by comments of writers such as Dickens, Thackeray and Pepys on executions they witnessed. Another scholar adds: "In retrospect, we are likely to admit that the era of public hanging was far more dramatic, socially satisfying, even though bizarre and emotionally tense, than any other later period of the history of capital punishment in this country" (Teeters, 1967).

But the popularity and circus-like atmosphere of public executions led to several problems, not the least of which was the occasionally violent demeanor of those in attendance. "In 1807 the crowd of forty thousand became so crazed at the executions of Holloway and Hagerty that nearly a hundred dead and dying were lying in the street when the show was over"

(Koestler 1956). Scholars note numerous accounts of such violence. In the absence of sophisticated data collection techniques, we know only of anecdotal evidence about the murders and suicides committed in the immediate aftermath of public executions, but such evidence is abundant (Cooper 1974; Teeters 1967; Koestler 1956).

Another effect, documented as much in popular literature as in news accounts, was the frequent reversal of roles at the last minute by participants in public executions, especially in cases where the condemned comported himself bravely. The executioner was seen as vile, the criminal, as a hero. If the condemned repented and asked forgiveness, "it was as if he had come through some process of purification: he died, in his own way, like a saint," (Foucault 1977) thus upsetting the validation of social power structures the execution was meant to re-enforce.

The removal of executions from public view began in the nineteenth century, led in the United States by New York in 1830, with hangings and shooting conducted in relative privacy behind prison walls. The last public executions in America were the hanging of a black man for rape in Kentucky in 1936, before a crowd of twenty thousand, and the hanging of a white man in Missouri, in 1937, before some five hundred spectators, many of whom had paid admission in order to watch from inside the prison walls (Bedau 1982).

At least one scholar relates the rise of sensational press accounts of executions to their increasing removal from

public view, noting that eighteenth and early nineteenth century news reports of executions were terse and perfunctory. "Perhaps executions became 'good copy' only after they were removed from the public eye but left in the public imagination" (Teeters 1967). Teeters cites various examples of sensational execution reporting, including the classic 1875 Chicago Times headline announcing the hangings of four persons: "Jerked to Jesus." One of the most famous tabloid photographs is the New York Daily News full front-page shot of convicted murderess Ruth Snyder at the moment of her electrocution, taken by Thomas Howard with a miniature camera he strapped to his leg and smuggled into the death chamber, from which photographers had been barred. The News edition with Snyder's picture sold an extra one million copies (Emery and Emery 1984; Kobre 1980).

Since the publication of the illicit Snyder photographs, even celebrated executions, such as those of Ethel and Julius Rosenberg in 1953 and Caryl Chessman in 1960, have been conducted privately. Of course shootings and occasionally executions in Third World wars are staples of nightly news broadcasts. And with the advent of the television docudrama, viewers can see dramatic recreations of executions, such as that of Gary Gilmore.

The television version of Gilmore's life and death was based on an exhaustive book by Norman Mailer, The Executioner's Song (1979). A substantial amount of Mailer's narrative in the latter section of the book deals with the maneuvers of various media for various rights to the details of the case. Mailer

quotes ABC newsman Harry Reasoner as favoring live coverage of Gilmore's execution. "But only this one." Watching the televised version of the execution, Gilmore's brother, Mikhail, wondered if there was "something about these reenactments that contains any social or moral truths that somehow might redeem the tragedy of a life misspent, or were the original events themselves little more than unwitting fatal rehearsals for a filmic construction of how a true life might play at its most ruinous?" (Gilmore 1982).

DETERRENCE THEORY

Inevitably the question of whether or not televised executions would serve as a deterrent against the commission of capital crimes depends on whether or not capital punishment itself acts as a deterrent. Controversy over deterrence theory is at least two hundred years old, but it was not until the 1950s that sophisticated statistical evaluations of punishment effects were conducted (Klein, et.al. 1982). Theorists on both sides of the issue have gathered data to prove their cases, usually including in their presentations methodological attacks on researchers whose data led to opposite conclusions. The proliferation of studies in the past three decades makes it impossible to cite them all, though the bibliographies of some recent studies attempt to be comprehensive (Bedau 1982; Phillip 1980; Phillips and Hensley 1984).

The first modern attempt to explore the deterrent effect of capital punishment with sophisticated statistical methods

was that of Thorsten Sellin (1959). The focus of Sellin's study was a comparison of homicide rates over time between contiguous states; one state in each pair permitted capital punishment, the other did not. To control for other factors, he selected pairs of states with as similar population demographics as possible. Sellin found that "Within each group of states having similar social and economic conditions and populations, it is impossible to distinguish the abolition state from the others... The inevitable conclusion is that executions have no discernible effect on homicide death rates" (Sellin 1959).

Sellin's methodology was both praised as elegant and denounced as simplistic (Klein, et.al. 1982). The best known refutation of Sellin's work is that of Isaac Erlich (1975), who criticized Sellin for failing to take account of how the states which retained the death penalty actually employed it. Erlich charged that many states which sanctioned the death penalty in fact rarely used it. Erlich developed an elaborate theory of supply "and the (negative) social demand for murder," with a complex equation to measure the "murder supply function," including econometric measures and factors such as probabilities of apprehension, of conviction given apprehension, of execution given conviction. Erlich was, in turn, criticized by a number of scholars for various methodological transgressions (Bowers and Pierce 1975; Klein, et.al. 1982).

In 1980, David Phillips proposed that "Researchers may have failed to discover a deterrent effect because almost

all studies on capital punishment use yearly rather than weekly or daily homicide rates." Phillips examined fifty-seven years of homicide data in Great Britain in terms of executions. He constructed an experimental period (during execution week) and a control period (of weeks preceding and succeeding the execution), hypothesizing ~~that~~ ^{that} the number of homicides in the experimental period would fall below the average in the control periods. Even when he extended the control periods to two weeks before and two weeks after the experimental week, or three and three or four and four weeks, before and after, he found a marked drop in homicides during the experimental week.

Significantly, he defined a positive relationship of newspaper publicity to homicide deterrence, and showed that "The more publicity given to the execution, the more homicides should be deterred." The study discovered the short-term deterrent effect, showing that the frequency of homicides drop by 35.7 percent in the two weeks immediately following an execution. But no long-term effect was found. Within five or six weeks of an execution the drop in homicides was cancelled by an equally large rise. "The data in this paper suggest that the conservative and liberal positions, apparently irreconcilable, are actually both correct" (Phillips 1980).

Since the mid-1970s, Phillips has conducted a number of studies which examine the effects of publicity about murder and suicide on accidents and violent crime (Phillips and Hensley 1984). In 1982, Bollen and Phillips used network newscasts in a study of suicides, finding that suicide stories

covered by at least two of the three networks signalled a rise in suicides in the ten days following those reports, but no increase before them, especially in geographic areas where the story was most heavily publicized.

More recently, Phillips and Hensley (1984) examined patterns of more than 140,000 U.S. daily homicides, before and after publicized innocent verdicts, life sentences, death sentences and executions. For evidence of publicity, the researchers chose events listed in Facts on File, a comprehensive index of newspaper news, and the Vanderbilt Television News Index, summarizing network television news broadcasts. They coded separate dummy variables for days of the week, months of the year and holidays. Based on Phillips' previous work, they looked for maximum impact of effects within a four-day period following these various stories. They found "no evidence that life sentences have a significantly weaker deterrent effect than death sentences or executions." Once more, they found all deterrent effects to be short-lived.

Conflicting data collection techniques among researchers, and especially widely divergent interpretations of the same or similar data sets, have drawn the critical attention of scholars in recent years. In an article assessing the importance of a researcher's prior beliefs in estimates of the deterrent effect of capital punishment, one social scientist discovered that, using a single data set, but isolating specific variables important to five different types of researchers, the "conflicting interpretations of the data

evidence are serious" (McManus 1985).

McManus identified five categories of researcher, each with his or her own predisposition, and the consequent variables they either considered or ignored. The "right winger" considers deterrence data relevant, but discounts social and economic data. The "rational maximizer" invokes strictly economic considerations. The "eye for an eye" type disregards all variables as irrelevant to a revenge ethic. The "bleeding heart" thinks economic improvement would cut homicides but discounts social data and assumes that capital punishment has no deterrent effect. The "crime of passion" school believes uncalculated or hot-blooded murder takes no account of deterrence, but that social and economic factors are important. McManus summarized his data by an unconstrained regression of the murder rate on all deterrence, economic and social variables, to pinpoint the phenomenon, already known to critical social scientists, that researchers find precisely the information which supports their prior views.

In the large literature concerning deterrence theory, the overwhelming majority of studies, regional, national and international, have found no statistical support for capital punishment as a deterrent to any category of capital crime. But it may be that the preponderance of studies have been undertaken by researchers who wished to show the lack of a deterrent effect, to further support their cases against a penalty currently in use.

Whether or not theories concerning the deterrent effects of capital punishment on serious crime are hopelessly

prejudiced by researcher bias, or whether Phillips is correct about short-term but no long-term deterrence, is a subsidiary, perhaps irrelevant and at worst, obfuscatory question for some researchers. Following Durkheim, one sociologist declares flatly that "neither the presence of the death penalty nor its application deters homicide," but that is not the point. The death penalty exists to enforce what Durkheim called "normative validation" (Lempert 1983).

Other social scientists argue that retribution is the primary impetus for the retention of the death penalty. The tendency toward retribution becomes more or less prevalent across society depending on economic conditions. The "level of threat (economic) increases authoritarian tendencies, including punitiveness" (Vidmar and Miller 1980). These authors base some of their conclusions on "a number of surveys (which) indicate that approximately half of those who favor capital punishment state they would favor it even if they were convinced it had no deterrent or other instrumental effects."

Using data from an attitude survey, with support for the death penalty as the dependent variable, researchers identified four factors contributing to death penalty support: retribution (believing the penalty just), humanitarian (believing it cruel), instrumental (penalty is a deterrent) and pragmatism (expensive to keep people in prison. Analyzing the results to see whether subjects expressed an "instrumental" response to crime per se, or instead expressed a "symbolic" attitude, reflecting a general outlook of political and social conservatism,

the authors found that "citizens' policy preferences concerning the use of the death penalty are a reflection of their basic values, not a result of their specific concerns about crime" (Tyler and Weber 1982).

PUBLIC OPINION AND THE COURTS

As early as 1910 (in Weems v. U.S.), the United States Supreme Court acknowledged that "time...brings into existence new conditions and purposes," and predicted that the notion of cruel and unusual punishment may change as "public opinion becomes enlightened by human justice." In 1958 (Trop v. Dulles), the Court further noted that "evolving standards of decency ...mark the progress of a maturing society" (Vidmar and Ellsworth 1974). In the past two decades, American public opinion regarding the death penalty has undergone profound changes, reversing earlier trends toward abolition. General support for capital punishment declined from 62 percent in 1936 to 42 percent in 1966. By 1969, support had risen to 51 percent and has continued to rise to its current record level of 84 percent (Vidmar and Ellsworth 1974; AP 1985).

In 1967, with opposition to capital punishment at its peak, because a number of capital cases were in various stages of judicial challenge and review, an unofficial moratorium on executions began. Not until 1977, after an unprecedented ten-year hiatus, was the death penalty imposed again, and then only because Gary Gilmore waived his right of appeal and elected to expedite the process of his own execution.

During that ten-year period, the U.S. Supreme Court handed down ~~two~~ of its most important decisions regarding capital punishment, which set new standards for death penalty codes.

In Furman v. Georgia (1972), the Court found most death penalty laws unconstitutional because they violated the clause in the Eighth Amendment against "cruel and unusual punishment." The Court divided five to four, with none of the Justices in the majority concurring with any of the others. In fact, each of the nine Justices wrote his own separate opinion, causing the text of Furman to run to 243 pages, longest in the history of the Supreme Court. The Court found the death penalty cruel and unusual because it was applied by states in sporadic, arbitrary, capricious and discriminatory fashion (Vidmar and Ellsworth 1974).

Opponents of the death penalty saw Furman as a landmark judicial confirmation of their position. But many state legislatures simply rewrote their capital statutes to circumvent the specific objections the Justices cited in their decision, especially the distinction between mandatory and discretionary sentencing procedures. In 1976, in Gregg v. Georgia, the Court ruled that the death penalty per se was not unconstitutional, thereby affirming the rights of states to enact death penalty laws within certain guidelines, which many states quickly adopted. After Gilmore's 1977 execution broke the ten-year moratorium, thirteen more executions took place between January, 1977 and February, 1984. Since Gregg, a total of 36 men and one woman have been executed, and the

rate of executions is increasing. There were five in 1983. In 1984 there were 21, and in the first weeks of 1985 four states carried out executions within a 12-day period" (AP 1985).

With the increased number and rate of executions, less media attention is given to any one of them. But in the period immediately following the moratorium, executions were few in number and spaced widely apart. Each of the condemned prisoners received a great deal of attention. In a study examining "The First Eight After Furman..." Jolly and Sagarin (1984) found the eight men executed between 1977 and September, 1983, were atypical of the death row population in significant ways. They were older than average (avoiding sympathy for youthful offenders), seven of eight had previous records, their crimes were particularly gruesome, their innocence was not in question and four of the eight, including Gilmore, expressed a willingness to die. The authors conclude that "By this selectivity, the public has been misled. The struggle against capital punishment had been disarmed as much by this selectivity as by the violence that swept the nation" (Jolly and Sagarin 1984). The authors maintain that if executions increased (as they have), the selection criteria of the immediate post-Furman era could not be maintained, an easy prediction and an accurate one.

It is important to underscore the relationship of public opinion to the legal system of the United States. As Vidmar and Miller (1980) point out: "The greater the perceived degree

of social consensus about a rule or law, the more likely the individual (judge or juror) is to respond punitively. Consensus is an indication of the validity of the violated rule." For evidence that consensus influences judicial sentencing, the authors point to marijuana smokers and draft evaders, whose punishments diminished in severity as changing social perceptions of those issues reached the judiciary. Marijuana became more socially used and the Vietnam war lost popularity, and the offenders were more often middle class individuals with no prior records.

A Media General-Associated Press poll taken in January, 1985, showed public support for the death penalty at an all-time high, with 84 percent of those surveyed in favor of the death penalty under some circumstances (AP 1985). Fifty-three percent of those in favor said they believed the death penalty was not carried out fairly from case to case. Death penalty supporters were asked what they considered the main justification for capital punishment. Thirty-one percent cited deterrence, while 43 percent said it was in order to protect society. Seventeen percent said it was to punish people.

The president of the National District Attorneys Association said he "suspected a greater percentage of the public believed punishment the main justification, but there is a great amount of reluctance to say that." With support for the death penalty very high, a record 1400 inmates on death row and 38 states empowered to execute them, judicial

sentencing following consensus opinion based on desires to punish criminal and protect society, we may well be witnessing a phenomenon we could call, after Noelle-Neumann, a "spiral of violence."

CONCLUSIONS AND A MODEST PROPOSAL

Some researchers argue that television "viewers can be taught general aggressive style and specific violent behaviors" (deLeon and Naon 1974). In a review and update of the Surgeon General's Report on television and social learning and behavior, Liebert and Schwartz (1977) found that viewing violence on television leads to the disinhibition of whole classes of aggressive behavior, whether the methodology is of correlational or experimental outcomes or of an analysis of underlying process. Liebert and Schwartz found children most prone to direct imitation of televised behaviors, especially those most vividly and vigorously portrayed, while disinhibitions of behavior and attitudes were observable among adolescents. Televised executions might contribute to these aggressive tendencies. One British writer is more concerned with revelations of a condemned person's crimes than with the execution itself. "As the child murderer is executed, details of how he tortured his victims are revealed to the telemass: deviants are excited thereby" (Economist 1983).

In a limited survey of television news directors in Texas, only one in five thought executions should be televised, and

but almost half of those opposed gave as their reason, "the public does not wish to see it" (Ransom 1985). No recent public opinion poll has asked directly whether or not respondents favored televising executions. But historical evidence indicates the great popularity of public executions. The photograph of Ruth Snyder in the electric chair sold an extra one million copies. And the recent presence of unruly pro-punishment crowds outside the prison execution chamber in Huntsville, Texas (AP 1983), coupled with unprecedented support for capital punishment, strongly suggests the public might well favor televised executions.

Those who hope televised executions would act as a greater deterrent to the commission of capital crimes would probably be disappointed. No study shows a significant relation between the death penalty, or the publicity given executions, and the homicide rate, except for a period of days. Those who favor televised executions to stimulate public outcries against capital punishment might or might not like the results. Televised executions would certainly receive much media attention at first because of the historic nature of the events. But the attention would probably diminish rapidly as executions continued. Proponents of every stripe would be heard briefly, then the shouting would die away. No doubt strict broadcast rules would be devised and scrupulously observed, to avoid any stigma of sensationalism or bad taste.

Executions might well follow the pattern of other spectacular coverage, such as space launches. The first

astronauts were covered exhaustively. Networks interrupted regular programs and assigned their most prestigious anchors to comment on the scene. As the novelty faded, so did press coverage, media comment and public fascination -- until the recent shuttle disaster. The same process might occur with executions, especially if they were televised at the same rate at which they were taking place.

Another important variable is the mode of execution. As researchers found the more "vigorous and violent" forms of televised violence had stronger effects on viewers, less violent methods have less observable effects. It could well be a much different experience to witness a death by firing squad or electrocution than the calm, if macabre, process of an execution by lethal injection. Viewers who watch executions in groups might well be more profoundly influenced by other reactors, for or against the spectacle.

In his Furman opinion, Justice Thurgood Marshall argued that the public supporting the death penalty is relatively uninformed about the effects and the circumstances of this penalty as it is actually used in our society. He also proposed that if this ignorance were remedied, support for capital punishment would weaken and change, leaving only the most strongly retributive individuals in favor of the death penalty (Bedau 1982; Vidmar and Ellsworth 1974).

If condemned criminals know their executions are to be broadcast on television, they might well comport themselves with a bravado not seen since the days of public executions.

Perhaps the condemned might become more sympathetic in their last moments than all memory of their victims.

Of course, unless and until executions are actually televised, we can make no conclusive statements about their effects. But using the data we have reviewed, we can offer tentative comments about our opening propositions.

Would televised executions act as a greater deterrent to capital crime? Historical and statistical data suggest that, apart from a short-lived effect of days, we would probably not observe a decline in capital crimes as a result of televised executions. There would be no deterrent effect.

Would televised executions weaken support for the death penalty, as James Autry hoped and Justice Marshall predicted? This is a testable hypothesis, and probably the one worth testing.

Would televised executions contribute negatively to the climate of violence, adding to any existing disregard for human life? Theorizing about why the United States has returned to such strong death penalty support, a British writer noted the American heritage of the Puritans and the wild west, and especially the tendencies of the southern states with "the highest murder rate, approval of corporal punishment, fondness for football, recruitment to the army," as well as the legacies of slavery and lynching (Economist 1985). With survey data showing death penalty support at an all-time high and deterrence as only a secondary rational for that support, it might be difficult to detect any difference in the current

retributive atmosphere if death penalties were televised.

What about other effects of televised executions?

This is an area for conjecture only, but could we not imagine for instance, that once death by legal injection were seen to be painless and undramatic, those with agonizing terminal diseases or with loved ones in similar pain might will give new thought to the efficacy of euthanasia? At this point it is impossible to say, but researchers should be alert to these unforeseen effects.

In order to test the Marshall hypothesis, I would propose a limited trial run of televised executions, for example, in the state of Texas. Ideally the potential audience for such a trial would be surveyed before and after such exposure, and observed, as comprehensively as possible, during the viewing, by as many social scientists as could be enlisted for this important task. Over time, clues as to the changing retributive environment might be detected, as well as ancillary effects not now predictable.

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